

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

Billing Disputes between January 17, 2001- December 31, 2001

This Settlement Agreement and Mutual Release (the "Agreement") is entered into on this 12th day of July, 2004, between the California Department of Water Resources acting through its Electric Power Fund, separate and apart from its powers and responsibilities with respect to the State Water Resources Development System which is not a party to this agreement (hereinafter, "CERS"); and Duke Energy Trading and Marketing, L.L.C. (hereinafter, "DETM"), hereafter collectively referred to as the Parties.

RECITALS

A. WHEREAS, there exists an outstanding dispute between the Parties concerning an alleged over-collection by DETM, on or about March 9, 2001, of amounts owed by CERS to DETM, and the treatment of interest with respect thereto, on contracts for the delivery of electricity that were sold by DETM in the California Power Exchange ("CALPX") Block Forward Market ("BFM") for the production period of February 1, 2001 – February 6, 2001 and that were subsequently taken by the Governor of California pursuant to Executive Orders Nos. D-20-01 and D-21-01 (January 31, 2001)("the March 9, 2001 Block Forward Dispute"); and

B. WHEREAS, there exists an outstanding dispute between the Parties concerning an alleged unpaid invoice that DETM submitted to CERS on or about May 5, 2001 for energy that DETM sold to CAISO for "out-of-market calls" during the production period of April 1, 2001 – April 30, 2001(the "May 5, 2001 Out of Market Dispute"); and

C. WHEREAS, there may be other as yet undiscovered or unresolved accounting disputes between the Parties relating to the settlement of accounts for the sale and purchase of energy and ancillary services from January 17, 2000 through December 31, 2001 but specifically excluding and reserving all disputes that are the subject of any pending litigation at the Federal Regulatory Energy Commission or in the state or federal courts; and

D. WHEREAS, the Parties desire to resolve all disputes between them with respect to the amounts owed and owing for the period January 17, 2000 through December 31, 2001 without further expenditure of time and money;

E. THEREFORE, the Parties hereby agree that:

AGREEMENT

1. Refund To CERS For Over Collection.

DETM will make a cash payment to CERS in the amount of \$3,507,600.00 in full payment and satisfaction of any and all amounts relating to the March 9, 2001 Block Forward Dispute. No interest shall be paid or due on such amount. The payment shall be made by wire transfer of immediately available funds within two (2) business days after the execution of this Agreement, to an account designated in writing by CERS.

2. Mutual Releases

2.1 Mutual Release

Subject to the terms hereof, CERS hereby releases and forever discharges DETM and DETM hereby releases and forever discharges CERS and their respective successors, assigns, directors, officers, employees, agents and representatives from and against any and all claims, demands, causes of action, acts, omissions, defenses, offsets, losses and expenses, of any and every kind, nature, character or description, whether known or unknown, liquidated or unliquidated, fixed or contingent, which they had, have or may have, up to and including the date of execution of this Agreement, arising out of or relating to (a) the March 9, 2001 Block Forward Dispute and (b) the May 5, 2001 Out of Market Dispute and (c) any accounting disputes between the Parties relating to the settlement of accounts for the sale and purchase of energy and ancillary services from January 17, 2000 through December 31, 2001, but specifically excluding and reserving all disputes that are the subject of any litigation at the Federal Regulatory Energy

Commission or in the State or Federal courts. Nothing in this Section limits or affects either Party's right to enforce its rights and obligations under this Agreement.

2.2 Reservations and Limitations

These mutual releases are intended to resolve only outstanding accounting and billing settlement disputes between CERS and DETM for the period January 17, 2001 through December 31, 2001 and nothing in this Settlement Agreement and Mutual Release shall affect in any way any other disputes between Duke and CERS that are the subject of litigation at the Federal Regulatory Energy Commission or in the State or Federal courts including without limitation the California Refund Proceedings being conducted in FERC Dockets EL00-95-000, *et seq.* which claims are expressly reserved and which the Parties anticipate will be resolved through a separate agreement. These mutual releases do not affect any of the Parties' rights and obligations in regard to any claims and/or rights of the State Water Resources Development System, which is not a party to this Agreement.

3. Knowing Waiver

The Parties acknowledge that there is a risk that, subsequent to the execution of this Agreement, they may incur, suffer or sustain injuries, losses, damages, costs, attorneys' fees, expenses or any of these which are in some way caused by or connected with the matters set forth above that are unknown or unanticipated at the time this Agreement is signed, or which are presently not capable of being ascertained. The Parties further acknowledge that there is a risk that such damages as are known may become more serious than now anticipated or expected. Nevertheless, the Parties acknowledge that this Agreement has been negotiated and agreed upon in light of these realizations, and each of them hereby waives and relinquishes all rights and benefits they may have had with respect to these unsuspected claims. Except as provided in Section 2, the Parties specifically waive their right under Section 1542 of Civil Code of California, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Parties also expressly waive any equivalent or similar provision of any statute or other law of the United States, or any state or jurisdiction.

4. Compromise of Disputed Claims

The Parties understand and agree that this Agreement is the compromise of disputed claims and the payment and other consideration recited herein shall not be construed in any matter or for any purpose whatsoever as an admission of liability, obligation, or responsibility on the part of the Parties, and they further expressly agree not to take the position in any matter or for any purpose whatsoever that the other Party has in any manner waived any legal position or made an admission of liability, obligation, or responsibility as a result of entering into this Agreement, which liability, obligation, or responsibility is, in any event, expressly denied.

5. Exclusive Ownership of Claims

The Parties represent, warrant and covenant that no other person or entity has or claims to have any interest in the claims, demands, damages, actions, or causes of action which are the subject of this Settlement Agreement, that they have the sole rights and exclusive authority to enter into and execute this Agreement, and that they have not sold, signed, transferred, conveyed, encumbered or otherwise disposed of any of the claims, demands, damages, actions or causes of action which are the subject of this Agreement.

6. Construction of Agreement

This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. The Parties therefore expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or its attorneys, and will be construed accordingly. This Agreement shall be interpreted in accordance with and

governed in all respects by the law of the State of California, except insofar as federal law is applicable, in which case federal law will apply.

7. **Modification of Agreement**

This Agreement may be modified, amended or terminated only by writing executed by the Parties.

8. **Binding Effect**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective past, present and future heirs, executors, administrators, assignors, assignees, representatives, agents, attorneys, partners, trustees, trustors, directors, officers, shareholders, owners, partners, employees, insurers, and all parent, subsidiary or affiliated business entities, and their predecessors and successors in interest.

9. **Non-Severability Of Provisions**

If any provision or part of any provision of this Agreement is for any reason held to be invalid, unenforceable or contrary to public policy or law, the remainder of this Agreement shall become null, void, and unenforceable.

10. **Entire Agreement**

This Agreement contains the entire agreement between and among the Parties with respect to the matters set forth herein. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

11. **Advice of Counsel**

The Parties have obtained the advice of legal counsel before entering into this Agreement. The Parties execute this Agreement with full knowledge of its significance and with the express intention of effecting its legal consequences.

12. Counterparts

This Agreement may be executed in one or more duplicates or counterparts, each of which shall be deemed to be the original, even if the others are not produced, and all counterparts so executed shall constitute one agreement which shall be binding upon all the Parties, notwithstanding that the signature of all Parties' designated representatives do not appear on the same page.

13. Cooperation

The Parties to this Agreement agree to cooperate fully and execute any and all supplemental documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this agreement.

14. Warranty of Authorized Signatories

Each of the signatories hereto warrants and represents that he or she is competent and authorized to sign this Agreement on behalf of the Party for whom he or she purports to sign, and each Party agrees to indemnify and hold harmless the other Party against any claim, demand or suit, including necessary expenses of investigation and reasonable attorneys' fees, in which it may be or is asserted that the signatory of such Party was not competent and/or not authorized to execute this Agreement and receive the consideration therefor.

15. Approvals

Each Party represents and warrants that no consent, approval, authorization or filing of with or to any governmental body exercising executive, legislative, judicial, regulatory or administrative functions is required for the execution, delivery and performance of this Agreement by such Party.

16. Notifications

Any notice or other communication given hereunder by a Party to another Party

("Notice") shall be in writing and delivered personally or by registered or certified mail, postage prepaid and return receipt requested, or by facsimile, as follows:

Keith L. Head
Sr. Vice President & General Counsel
Duke Energy North America, LLC
5400 Westheimer Court
Houston, TX 77056-5310
Tel. (713) 627-6520
Fax (713) 627-5681
email: klhead@duke-energy.com

California Department of Water Resources
Attn: Bill Green, Settlements Manager
3310 El Camino Avenue, Suite 120
Sacramento, CA 95821
Phone: (916) 574-1291
Fax: (916) 574-2512

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by facsimile shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All notices delivered by facsimile shall be confirmed by the sender promptly after transmission in writing by certified mail or personal delivery. Any Party may change any address or notice recipient by giving notice as provided above of such change of address or addressee to the other Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the dates set forth under their respective signatures. This Agreement may be executed in one or more counterparts and shall be deemed accepted by the Parties as of the date it has been executed by the last of the Parties to sign. Signatures transmitted by facsimile shall be deemed the same as originals.

DATED: July 12 2004

**CALIFORNIA DEPARTMENT OF WATER
RESOURCES**, acting through its Electric Power
Fund, separate and apart from its powers and
responsibilities with respect to the State Water
Resources Development System

By: _____

Name: Peter S. Garriss
Title: Deputy Director

DATED: July __, 2004

**DUKE ENERGY TRADING AND
MARKETING, L.L.C.**

By: _____

Name: Larry A. Wall
Title: President

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By: _____

Name: Peter S. Garris
Title: Deputy Director

DATED: July 12, 2004

**DUKE ENERGY TRADING AND
MARKETING, L.L.C.**

By: _____

Name: Larry A. Wall
Title: President

DUKE – CALIFORNIA PARTIES SETTLEMENT

This Duke-California Parties Settlement (the “Agreement”) is entered into July 12, 2004, by and among the parties listed in Section 1 (individually a “Party” and collectively the “Parties”) with reference to the following facts:

Whereas the Parties are involved in complex regulatory proceedings before the Federal Energy Regulatory Commission (“FERC”) and related appellate proceedings regarding numerous issues arising from events in California energy markets in 2000-2001;

Whereas the Parties have determined that it is preferable to settle the disputes addressed herein rather than continue to litigate.

Now therefore, in consideration of the covenants and agreements contained herein, the Parties agree as follows:

1. *PARTIES*

The Parties to this Agreement are:

- 1.1 Duke Energy Corporation; Duke Capital LLC, Duke Energy Americas, LLC; Duke Energy North America LLC; Duke Energy Merchants LLC; Duke Energy Trading and Marketing LLC (“DETM”); Duke Energy Morro Bay LLC; Duke Energy Moss Landing LLC; Duke Energy Oakland LLC; and Duke Energy South Bay LLC, (collectively referred to as “Duke” or “Duke Parties”). Subject to confirmation prior to entry into the Definitive Agreements that they are direct or indirect subsidiaries of Duke Capital LLC, and not owned by any non-Duke entities, the following entities shall be added as parties to the Definitive Agreements (as defined in Section 5.1): DETMI Management Inc., DE Power Generating, LLC, Duke Energy California LLC, Duke Energy Generation Services, LLC, Duke Energy Fossil-Hydro LLC, Duke Energy Fossil-Hydro California, Inc., DEM Management Partners, LP, Catawba River Investments II LLC, and DE Power Generating Holdings, LLC. Nothing in this Agreement or in the releases set forth herein shall be deemed to extend to additional Duke entities, beyond the named Duke Parties and the named Duke Capital LLC subsidiaries identified here;

- 1.2 Pacific Gas and Electric Company ("PG&E"); Southern California Edison Company ("SCE"); San Diego Gas & Electric Company ("SDG&E"); the People of the State of California, *ex rel.* Bill Lockyer, Attorney General ("California Attorney General"); the California Department of Water Resources acting through its Electric Power Fund, separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (hereinafter, "CERS"); and the California Electricity Oversight Board ("CEOB") (collectively referred to as the "California Parties" and each individually as a "California Party");
- 1.3 The San Diego District Attorney's Office; Attorneys General of the States of Washington and Oregon in their capacities as chief law enforcement officers of their respective states, and to the greatest extent permitted by law (collectively referred to as "Other Claimant Parties");
- 1.4 FERC Office of Market Oversight and Investigations ("OMOI").
- 1.5 The Parties acknowledge that simultaneously with the negotiation of the terms of this Agreement there have been negotiations with representatives of persons and entities that have asserted, in private litigation, civil claims arising from the operation of the western electricity markets. The term sheets regarding settlement of those claims are expected to be initialed simultaneously with the execution of this Agreement. The Definitive Agreements provided for in Section 5 below will encompass the terms agreed to herein and the additional terms of the private plaintiffs' term sheet(s). Nothing in the terms of the private plaintiffs' term sheet(s), when incorporated into the Definitive Agreements, will modify any of the provisions of this Agreement. Any court approvals required of the settlement of private litigation claims shall not affect the Settlement Effective Date under this Agreement.

2. CONSIDERATION

- 2.1 *Duke's Monetary Consideration.* In consideration of the respective covenants herein, Duke shall provide and agree to the following monetary consideration, consisting of an assignment of specified Duke unpaid receivables and associated interest plus cash payments, all of which total \$202,500,000 (before consideration of a \$2,000,000 credit back to Duke in consideration of the resolution of the CT485 Claim defined below).

2.1.1 Receivables.

- 2.1.1.1 *Total Amount of Receivables.* As of June 30, 2004, the total amount owed by the California Power Exchange Corporation ("PX") and/or the California Independent System Operator ("ISO") for sales by Duke of energy and ancillary services into the California power markets during the period January 1, 2000 through June 20, 2001, before any mitigation, was stated in the collective accounts of the ISO and the PX to be \$305,290,229, excluding interest, but assuming a crediting back to Duke of \$1,026,136 in interest previously paid by Duke. This amount reflects all payments received by Duke from the ISO or PX as of June 30, 2004.
- 2.1.1.2 *Duke-PG&E Agreement.* Pursuant to an agreement between Duke and PG&E, effective March 7, 2001, and a subsequent agreement between Duke and PG&E dated July 12, 2004 (collectively the "Duke-PG&E Agreement"), Duke has agreed to an offset (the "Offset") reducing as of March 7, 2001, the receivables otherwise owing to Duke by the ISO by \$165,114,222.39. The Parties agree that the Offset will in turn be reflected as an offset of \$165,114,222.39 as of March 7, 2001, in the amounts owed by PG&E to the PX and in turn owed by the PX to the ISO. For purposes of calculation of interest by the ISO and PX, these payments will be treated as if made on March 7, 2001, so that no interest will accrue to Duke, or be owed by PG&E, on the \$165,114,222.39 for the period on and after March 7, 2001. Interest relating to the period prior to March 7, 2001 shall be governed by FERC's Interest Determination in this proceeding, as defined below. The FERC Order approving this settlement shall constitute approval of the Offset and the appropriate recognition of the Offset by the ISO and PX, including a grant of any ISO and PX tariff waivers necessary to recognize the Offset and shall direct the ISO and PX to implement recognition of the Offset as provided herein.
- 2.1.1.3 *Duke Receivables.* The total amount of unpaid pre-mitigation receivables available to Duke from the PX and/or ISO for sales of energy and ancillary services into the California power markets during the period January 1, 2000 through June 20, 2001, but excluding (i) receivables or amounts owed by Duke which are accounted for separately under Duke's Reliability Must Run ("RMR") contracts, and

(ii) the Offset associated with the Duke-PG&E Agreement, shall be referred to herein as the "Duke Receivables." As of June 30, 2004, the amount of the Duke Receivables stated in the accounts of the ISO and the PX, following adjustment for the Offset, is \$140,176,006.61, before interest (other than crediting back to Duke \$1,026,136 in interest previously paid by Duke, as provided in Section 2.1.1.1).

2.1.1.4 *Duke Representations.* Duke warrants and represents, subject to its limited obligation to true-up Rerun Shortfalls, as described in Section 3.4.1, that the \$140,176,006.61 of Duke Receivables was reflected on the ISO and PX accounts as they stood prior to the preparatory re-run in FERC Docket No. ER03-746, without regard to any interest owing to or by Duke (other than crediting back to Duke \$1,026,136 in interest previously paid by Duke, as referred to in Section 2.1.1.1) or to any mitigation in the FERC Refund Proceedings (where mitigation refers to any adjustments, allowances or charges prescribed in the FERC Refund Proceedings, as defined in Section 4.1.1, other than those in the preparatory re-run and after taking account of the Offset referenced in Section 2.1.1.2). Duke further warrants and represents, not limited by its obligations in Section 3.4.1, that, as of the date of its entry into this Agreement, it is not aware of any material issue that is likely to arise in the preparatory rerun process in Docket No. ER03-746 that is unique to Duke, as opposed to issues that are likely to be common to market participants generally, and that is expected to have a material adverse effect on the Duke Receivables. For purposes of this representation, a material issue is an issue (or collection of issues) with a likely adverse impact of \$2.1 million or more on the actual amount of the Duke Receivables. Duke represents and warrants, not limited by its obligations in Section 3.4.1, that, except with regard to the Duke-PG&E Agreement, it has not, and as of the Settlement Effective Date shall not have, pledged, hypothecated, sold, transferred or otherwise assigned, to any third party, whether voluntarily or involuntarily or by way of setoff or offset, any of the Duke Receivables.

2.1.1.5 *Assignment of Receivables.* As of the Settlement Effective Date as defined below in Section 7.1.6, Duke shall assign to

the California Parties all of the Duke Receivables, including any adjustments to such receivable amounts that occur after the Parties' designated representatives have each executed this Agreement and including all interest on the assigned Duke Receivables and all claims, rights and defenses available to Duke with respect to the Duke Receivables. Except as otherwise provided herein, such assignment shall include any and all positive or negative allocations of charges or credits that may be made by the ISO or PX that cause an adjustment up or down in the Duke Receivables as a result of ISO and PX transactions by Duke in the period January 1, 2000 through June 20, 2001. To the extent that the ISO or PX are determined in any future proceeding or for any reason to owe any additional amounts to Duke for the period January 1, 2000 through June 20, 2001, such amounts are assigned to the California Parties. However, charges or credits that pertain to Duke transactions in the ISO or PX during periods prior to January 1, 2000 or after June 20, 2001 are not assigned to the California Parties and shall not in any way affect the Duke Receivables, as defined in this Agreement.

2.1.2 Cash Payments

2.1.2.1 No later than ten (10) business days after the Settlement Effective Date, Duke shall pay:

2.1.2.2 \$16,994,873 by wire transfer, from funds other than the Duke Receivables, into an interest bearing escrow account designated as the "Duke Refund Escrow"; and

2.1.2.3 By wire transfer from funds other than the Duke Receivables, into the Duke Refund Escrow, an amount equal to the sum of all distributions of funds relating to the period January 1, 2000 through June 20, 2001, (including any amounts designated as interest in such distributions) that have been made by the California ISO or PX to Duke on or after June 30, 2004, and prior to the transfers from the PX provided for in Section 3.1 ("Paid Duke Receivables"), plus interest thereon at the FERC interest rate from and after the date of Duke's receipt of the distributions; and

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- 2.1.2.4 \$40,300,000 by wire transfer, from funds other than the Duke Receivables, into an interest bearing escrow account designated as the "California Litigation Escrow"; and
- 2.1.2.5 \$549,973 by wire transfer to such account as FERC Trial Staff may designate in settlement of claims in Docket No. EL03-152-000 (as provided in the settlement between Duke and FERC Trial Staff).
- 2.1.3 The establishment, costs of maintaining, and maintenance of the Duke Refund Escrow shall be the responsibility of the California Parties. The establishment, costs of maintaining, and maintenance of the California Litigation Escrow shall be the responsibility of the California Parties and the Other Claimant Parties. Duke consents to any combination of these escrows with other similar escrows being maintained by the California Parties for purposes of settlements in the FERC Refund Proceedings.
- 2.1.4 Duke's payment of \$2,500,000 to FERC pursuant to its settlement agreement with OMOI in FERC Docket Nos. IN03-10-000 and PA02-2-000, as approved in FERC's December 19, 2003 Order, 105 FERC ¶ 61,307, shall be treated as monetary consideration under this Agreement and shall be allocated as provided in Section 3.2.2, provided that the portion of this \$2,500,000 that is allocated to Settling Parties shall be transferred (without interest) from the account in which it is now held to the Duke Refund Escrow, and the portion of this \$2,500,000 that is allocated to Non-Settling Participants, as defined below, shall remain in the account in which it is now held.
- 2.1.5 In addition to the payments of monetary consideration specified above, Duke shall pay \$5,000,000 into a Rerun Shortfall Escrow, to ensure payment of the Rerun Shortfall as provided below in Section 3.4.1. Duke shall be responsible for the establishment, costs of maintaining and maintenance of the Rerun Shortfall Escrow.
- 2.2 Duke's Non-Monetary Consideration.
 - 2.2.1 Duke will agree to implement FERC's Docket No. EL01-118 market behavior rules, as amended from time to time. Duke will agree, as of the Settlement Effective Date, not to pursue a challenge, by means of objection, rehearing, appeal or otherwise, of market behavior

rules adopted or implemented pursuant to FERC Docket No. EL01-118 (including the November 17, 2003 order, 105 FERC ¶ 61,218 (2003) and the May 19, 2004 order on rehearing, 107 FERC ¶ 61,175). This undertaking shall not preclude Duke (i) from opposing any party's challenges or objections that seek to modify the above-referenced orders, (ii) from defending its behavior in specific enforcement actions or other FERC proceedings, or (iii) from intervening in future docketed proceedings to comment on how the market behavior rules should be interpreted or applied.

- 2.2.2 Duke has provided the California Parties and OMOI with its Code of Business Ethics and shall provide each of them pertinent additional code of conduct requirements prior to executing the Definitive Agreement, wherein, the California Parties, if satisfied, may agree that Duke's code of conduct is consistent with the goal of promoting compliance with relevant legal requirements pertaining to Duke's future participation in California energy markets.
- 2.2.3 Duke will comply with applicable ISO tariff provisions concerning must-offer obligations; *provided*, however, that all Parties are free to advocate changes in those tariff provisions. The obligations of this Section 2.2.3 shall not affect Duke's obligations under Section 2.2.7.
- 2.2.4 For a period of twenty-four (24) months following the Settlement Effective Date, Duke shall, at its expense, retain an independent consulting or engineering company to perform semi-annual audits of outages during the prior six (6) months at Duke's generating plants in California. The findings of each audit shall be provided directly by that independent company to OMOI and shall be provided simultaneously to Duke, without prior review by Duke. The purpose of such audits shall be to determine whether plant outages are for legitimate operating, maintenance or economic reasons under the circumstances relevant to each outage, and are of an appropriate duration under the circumstances relevant to each outage. The first such audit of a total of four (4) shall be submitted to OMOI no later than eight (8) months following the Settlement Effective Date and shall examine outages during the first six (6) months after the Settlement Effective Date.
- 2.2.5 Duke agrees to cooperate with the California Parties and the Other Claimant Parties in pursuing claims against suppliers other than Duke in FERC Docket No. EL00-95, the show cause proceedings,

and related FERC proceedings, provided that such cooperation shall not obligate Duke to waive any privileges. As part of its ongoing cooperation obligations, Duke shall make witnesses available for interviews and depositions by the California Parties and the Other Claimant Parties at mutually convenient times and locations. The California Parties and the Other Claimant Parties will seek information in a focused manner, and will work with Duke to streamline information and requests as appropriate. The witness interviews, depositions and all documents disclosed will be subject to the existing or future confidentiality agreements and protective orders between Duke and the California Parties and the Other Claimant Parties and the confidentiality provisions of California Government Code Section 11180, *et seq.* Pursuant to its ongoing cooperation obligations, Duke will continue to produce relevant, non-privileged documents to the California Parties and the Other Claimant Parties, as requested. OMOI shall be permitted to attend and ask questions at any such interview or deposition, and shall be provided with copies of any written information provided through such cooperative efforts.

- 2.2.6 Duke shall continue to cooperate with the California, Oregon and Washington Attorneys General's investigations and litigation related to the California energy crisis, provided that such cooperation shall not obligate Duke to waive any privileges.
- 2.2.7 Duke agrees in principle, and subject to the attached proposed clarification of its obligation, Attachment 2, which shall be reviewed by the California Public Utility Commission ("CPUC") prior to the execution of Definitive Agreements, that during a period of ISO warning of a potential stage alert or actual stage alert in California, Duke shall abide by a must offer obligation to submit bids for all uncommitted, available capacity from its generation assets located in California into the ISO imbalance energy market at just and reasonable rates for one additional year following termination of the existing must offer obligation or until December 31, 2006, whichever is later. If Duke fails to meet this obligation, it shall be subject to disgorgement of profits in the amount of either (i) the profits realized by selling the power outside of the ISO, or (ii) the profit it would have made if it had sold the power into the ISO imbalance energy market, whichever is greater. In the event of a conflict between the requirements of this section and: (a) the ISO Tariff or operating instructions, (b) FERC must-offer requirements

or (c) CPUC must-offer requirements, if Duke is subject to any such requirements, the latter shall control over the requirements of this section.

- 2.3 The FERC Order approving the settlement shall constitute direction to the ISO and PX to recognize the assignment of Duke Receivables by Duke to the California Parties, as provided in Section 2.1.1.5, and direction to the ISO to recognize the Duke reversal and crediting to the Duke Receivables of \$1,026,136 in interest previously paid by Duke, as described in Section 2.1.1.1. The FERC Order approving the settlement shall also constitute direction to the ISO to recognize a credit due with respect to Duke Receivables of \$2,000,000 to resolve the Statement of Claim Duke served on the ISO on March 17, 2004, concerning the rescission of payments for energy and ancillary services, and the imposition of penalties under CT 485 with the ISO ("*CT485 Claim*"), the specifics of such resolution to be detailed in the Definitive Agreement. The payments that Duke is obligated to make in Section 2.2 take into account the crediting of the \$2,000,000 resolution of the CT485 Claim.
- 2.4 *California Parties' Consideration.* In consideration of the respective covenants in this Agreement, each of the California Parties shall agree to the releases set forth in Section 4, and shall agree to the remaining terms and conditions of this Agreement.
- 2.5 *Failure of Consideration.* In the event that either (i) the assignment of the Duke Receivables to the California Parties pursuant to Section 2.1.1.5 above and/or the associated transfer of the Duke Receivables pursuant to Section 3.1 below fails as the result of a breach by Duke of its representations and warranties set forth in Section 2.1.1.4 above, or (ii) all of the cash transfers required of Duke pursuant to Sections 2.1.2.1 through 2.1.2.5 above are not timely made as required by this Agreement, the California Parties may, within five (5) business days of it being determined by the California Parties that either (i) and/or (ii) has occurred, notify Duke in writing, at their exclusive election, that they intend to terminate this settlement, and the grounds for such termination, in which case the settlement and the Definitive Agreements shall terminate in their entireties except as to the tolling provisions of the Agreement, *i.e.*, as though the Settlement Effective Date had never occurred, unless, within five (5) business days of its receipt of the California Parties' written notice, Duke completely cures the deficiencies under (i) and/or (ii) above that are identified in the California Parties' notice, including payment of interest at the FERC interest rate on any payments past due under this Agreement.

The Definitive Agreement will contain additional provisions relating to consequences, including timing of payment of Refunds, in the event of bankruptcy, insolvency, and other events of default.

3. *DISPOSITION OF SETTLEMENT PROCEEDS*

The Duke Receivables assigned and payments made under Section 2 above shall be distributed and allocated between and among the California Parties, as well as between and among other market participants, in the manner set forth below.

3.1 Transfer of Funds.

3.1.1 No later than five (5) business days after the Settlement Effective Date, the California Parties shall advise the ISO and the PX that the full amount of the Duke Receivables that have been assigned to the California Parties pursuant to Section 2.1.1.5, as well as the associated interest on such amount, shall be applied to the funding of the refunds and other consideration provided for in this Agreement, including Deemed Distributions, as provided for in Section 3.3.

3.1.2 Thereafter, but no later than ten (10) business days after the Settlement Effective Date, a cash transfer shall be made from the PX Settlement Clearing Account to the Duke Refund Escrow of \$140,176,006.61, (i) less an amount equal to the total of all Deemed Distributions pursuant to Section 3.2, (ii) less any Paid Duke Receivables, (iii) plus the amounts owed by market participants with negative allocations shown on the Allocation Matrix developed in accordance with Section 5.2.

3.2 Allocation of Settlement Proceeds.

3.2.1 For purposes of the allocation of receivables and cash provided under this Agreement (together "Settlement Proceeds"), Duke shall be deemed to have provided a total Duke refund of \$160,200,000, before any applicable interest, of which \$122,100,000 shall be allocated to the period October 2, 2000 through June 20, 2001 (the "Refund Period"), and \$38,100,000 shall be allocated to the period May 1, 2000 through October 1, 2000 (the "Pre-October Period"). For purposes of this Agreement, "Refunds" refers to the foregoing amounts that Duke is obligated to pay pursuant to this settlement or as to Non-Settling Participants, amounts that FERC determines for the period January 1, 2000 through June 20, 2001, taking into account all mitigation adjustments, charges, and allowances

(excluding interest) in the FERC Refund Proceedings, as defined in Section 4.1.1. Notwithstanding anything to the contrary above, the California Parties shall retain the unilateral right, in connection with the drafting of the Definitive Agreements, to modify or reallocate between time periods the amounts designated above as Refunds based on such updated information concerning the Duke Receivables as at that time may be available to the California Parties, provided that such modification shall not impact the total amount to be paid by Duke. Duke shall be deemed to have fully discharged its Refund obligations to the California Parties and all market participants (whether they have opted in or have not opted into this settlement), for the period January 1, 2000 through June 20, 2001 by making the assignments and payments in Sections 2.1.1.5 and 2.1.2. Duke shall have no liability to the California Parties or any market participant with regard to the allocations of settlement proceeds or Refunds as made under this Agreement or as decided by FERC. The Refund Period amount of \$122,100,000 is paid after crediting Duke the \$2,000,000 in settlement of the CT485 Claim. Duke shall have no liability to any market participant nor any responsibility for paying, or otherwise ensuring the payment of, any interest amount to any market participant with respect to Duke Receivables or Refunds, except as provided in Sections 2.1.1.5, 2.1.2.3, 2.5, and 3.4.1, or except as payable out of an applicable Escrow created under this Agreement.

- 3.2.2 The Settlement Proceeds amounts allocated pursuant to the Allocation Matrix provided for in Section 5.2 below shall include (i) the total of all amounts transferred into the Duke Refund Escrow, including those amounts deposited directly by Duke pursuant to Section 2.1.2.2, and the amount transferred into the Duke Refund Escrow pursuant to Section 3.1.2, together with the amount of all Deemed Distributions, as provided for in this Section 3.2, and (ii) as to Settling Parties, the total amount paid by Duke to FERC pursuant to its settlement agreement with OMOI. The Definitive Agreements shall provide a separate allocation of cost responsibility among market participants for the \$2,000,000 to be credited with respect to Duke Receivables as a resolution of the CT485 Claim. The allocations shall be generally consistent with Attachment 1 to this Agreement, which sets forth allocations applicable to the California Parties and others.

3.2.3 The Settlement Proceeds amount allocated to the Refund Period incorporates an allowance of 50 percent of Duke's \$72 million Fuel Cost Allowance (or "gas adder") claim for that period. The Fuel Cost Allowance during the Refund Period shall be stipulated for purposes of the FERC Refund Proceedings as noted in Attachment 1. The California Parties will join Duke in seeking an order not requiring Duke to resubmit an audited fuel cost allowance claim. Duke shall not seek any additional "gas adder" allowances as against the California Parties and any other party that accepts the benefits of this settlement. The "gas adder" allowance provided for herein shall, as to the total amounts applicable to the market as a whole, remain fixed as to the Parties and others who "opt into" this settlement as provided in Section 6.1. The proposed allocation of charges for such allowance to individual market participants, which is currently based on gross load, shall be subject to adjustment and "true up" to comply with FERC's final orders, after all appeals, if any, specifying the appropriate allocations. Likewise, the Settlement Proceeds incorporate an offset for Duke's "emission adder". Allocation of the "emission adder" is also subject to true up to comply with FERC's final orders, after all appeals, if any, specifying the appropriate allocations if any for such adder. Because the charges for "gas adder" and "emission adder" allowances can exceed the refunds due to a market participant, some market participants may be shown as owing money in the allocation. Such participants accepting the terms of this settlement ("Net Payers") will not receive or be liable for payment until the date that FERC requires market participants to pay such allowances in the FERC Refund Proceedings, at which time the payments owed to or owing from such parties will be adjusted based on FERC's determinations concerning allocation of the fuel and emission adders.

3.3 Payment of Refunds.

3.3.1 Except as provided for Deemed Distribution Recipients, market participants that opt into this settlement that are owed net refunds after consideration of amounts that the particular participant may itself owe to the market in the form of refunds as calculated in exhibits CPX 51 and ISO 30 in Docket No. EL00-95 (such market participants being referred to herein as "Net Refund Recipients"), each such participant's allocable net share of Duke's total Refunds, as adjusted for fuel and emission adders, as provided under Section 3.2, shall be paid from the Duke Refund Escrow in the form of cash.

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The allocations to be used in the Refund distribution shall be set forth in the Definitive Agreements, as defined below, but are currently expected to be generally consistent with those shown in Attachment 1.

- 3.3.2 PG&E and other parties having an outstanding payable to the PX, or owing net refunds as calculated in exhibits CPX 51 and ISO 30 in Docket No. EL00-95 (*"Deemed Distribution Recipients"*), shall not receive a cash refund (except as to their allocable share of the \$2,500,000 payment provided for in Section 3.3.7 and of the \$549,973 provided for in Section 3.3.5) but shall instead receive their share of refunds, as also reflected in the Definitive Agreements, through an offset of their outstanding payable to the PX (a *"Deemed Distribution"*). The Parties agree, and the order approving the settlement shall constitute FERC's determination that the escrow established by PG&E pursuant to its Plan of Reorganization for payment of its outstanding debts to the PX may be reduced in an amount equal to its Deemed Distributions under this Agreement. Other market participants who do not qualify as Net Refund Recipients shall also receive their allocable refunds in the form of an offset against their outstanding market obligations.
- 3.3.3 Except as provided in Sections 3.3.4, 3.3.5, and 3.3.6 below, principal payments on refunds, either in the form of cash or through the offset of payables provided for in the case of Deemed Distributions, shall be effectuated both in the case of the California Parties, and as to any other party that "opts into" this settlement as provided for in Section 6.1 below (collectively, *"Settling Parties"*), no later than twenty (20) business days after the Settlement Effective Date.
- 3.3.4 The PX shall pay to the Duke Refund Escrow interest payable with respect to the Duke Receivables within ten (10) business days after FERC issues an order finally determining interest issues and shortfalls associated with the current ISO and PX settlement reruns and refund calculations (*"FERC Interest Determination"*), and interest amounts will be paid from the Duke Refund Escrow to Settling Parties within ten (10) business days after such distribution by the ISO to the PX, and from the PX to the Duke Refund Escrow. The amount of interest to be paid to Settling Parties associated with the refunds provided pursuant to this settlement shall be determined in the FERC Interest Determination, provided that, to the extent

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amounts are held in the Duke Refund Escrow, Settling Parties shall be paid interest on such amounts at the interest rate earned by that escrow account. Funds held in the California Litigation Escrow shall earn the rate of interest applicable to that escrow account. To the extent that the Settling Parties are entitled to payment from the Duke Refund Escrow or the California Litigation Escrow, each will be entitled to a proportionate share of interest at the escrow interest rate to the extent interest has been earned on such funds while in the escrow account. The Refunds for the Pre-October Period shall not bear any interest except for any pro rata share of interest that is earned on those amounts in the Duke Refund Escrow itself.

- 3.3.5 The \$549,973 paid by Duke pursuant to Section 2.1.2.5 shall be allocated and refunded as directed by FERC in Docket No. EL03-152-000 or as FERC may otherwise direct. Nothing herein shall preclude any Party from advocating any particular refund allocation methodology with respect to the \$549,973, nor shall any Party be precluded from contesting FERC's orders concerning the disposition of the \$549,973.
- 3.3.6 From the amount of Refunds that otherwise are due to CERS, an amount determined solely by CERS shall be withheld in the Duke Refund Escrow, or other escrow specified by CERS, until it is reasonably determined whether CERS has any obligations under Section 3.4.3.3.
- 3.3.7 The proceeds of Duke's payment of \$2,500,000 to FERC pursuant to its settlement agreement with OMOI shall be allocated to the Pre-October Period pursuant to the Allocation Matrix developed pursuant to Section 5.2 and paid out contemporaneously with the payments set forth in Section 3.3.3,. The portion of such amount allocated to Non-Settling Participants shall, remain in the U.S. Treasury account where the funds are currently located.
- 3.3.8 All funds in the California Litigation Escrow shall be distributed in accordance with a separate agreement among the California Parties and the Other Claimant Parties.
- 3.3.9 Non-Settling Participants shall not receive any accelerated payment of Duke Refunds under this settlement and shall not be guaranteed any specific level of Refunds.

3.3.10 Duke shall not be a claimant for any of the funds to be allocated pursuant to the terms of this Agreement.

3.4 Shortfalls and Excesses.

3.4.1 For purposes of this Agreement, the term "Rerun Shortfall" or "Rerun Shortfalls" refers to the amount, if any, by which the actual Duke Receivables, after completion of the current preparatory rerun process and adjustment for the Offset referred to in Section 2.1.1.2, is less than \$140,176,006.61 as determined in a FERC order (the "FERC Receivables Determination"), regardless of whether such order remains subject to requests for rehearing or appeals. Adjustments relating to the agreed upon \$2,000,000 credit provided for in Section 2.1 to resolve the CT485 Claim shall not count in the Rerun Shortfall determination. For purposes of calculating whether there is a Rerun Shortfall, there shall be taken into account a calculation of offsetting reductions in Refunds due to mitigation associated with any preparatory rerun adjustments to charge types ("Offsetting Mitigation Calculation"), i.e. variations of the rerun from the pre-rerun amounts shall be offset by any change in the MMCP mitigation associated with the variations arising from the rerun. The Parties commit to develop a mechanism, with the participation of the ISO, for incorporation into the Definitive Agreements, that will address how and at what stage of the ISO compliance process the Offsetting Mitigation Calculation will be made, as well as a mechanism for identifying Rerun Shortfalls upon completion of the preparatory rerun. Any dispute between Duke and the California Parties arising under this section which cannot be resolved through good faith negotiations shall be submitted to binding arbitration before a single, neutral arbitrator selected from the national panel maintained by the CPR Institute for Dispute Resolution utilizing the CPR Rules for Non-Administered Arbitration in effect as of the Settlement Effective Date. Within ten (10) business days after the existence and amount of any Rerun Shortfall has been determined pursuant to the FERC Receivables Determination, amounts from the Rerun Shortfall Escrow shall be paid into the California Litigation Escrow, by wire transfer, in the amount of the Rerun Shortfall, with interest at the FERC interest rate, up to a maximum additional payment of \$5,000,000. Any additional funds in the Rerun Shortfall Escrow, in excess of amounts to be paid into the California Litigation Escrow hereunder shall be distributed to Duke.

3.4.2 Subject to the limitations and allocations of responsibility set forth below, the California Parties shall be at risk for adjusting their own recoveries under this Agreement in light of shortfalls arising from Duke transactions in the ISO or PX market for the January 1, 2000 through June 20, 2001 period, as determined in the FERC Refund Proceedings, and shall be entitled to receive the benefit of any additional amounts that are found to be owing to Duke for such transactions in that period.

3.4.2.1 The period January 1, 2000 through June 20, 2001 shall be divided into the Pre-October 2, 2000 period, a Pre-January 18, 2001 Period (constituting the period October 2, 2000 through January 17, 2001), and a Post-January 17, 2001 Period. The California Parties will agree amongst themselves which portion of the Duke Receivables and Refunds relating to Duke relate to which period. The amount, if any, by which the Duke Receivables for any of the periods is less than the appropriate portion of \$140,176,006.61 allocated to that period shall be referred to herein as a "Receivables Shortfall." The amount if any, by which the Duke Receivables for any of the periods exceeds the appropriate portion of \$140,176,006.61 allocated to that period shall be referred to herein as a "Receivables Excess." The amount, if any, by which the funds deposited in the Duke Refund Escrow, after amounts are deemed allocated to the Settling Parties pursuant to the Allocation Matrix, are insufficient to satisfy all Refund awards made to those that elect not to "opt into" the settlement or otherwise fail to become a party to this settlement ("Non-Settling Participants") for any period shall be referred to herein as a "Refund Shortfall." The amount, if any, by which the funds deposited in the Duke Refund Escrow, after being deemed allocated to Settling Parties pursuant to the Allocation Matrix, exceed the amounts needed to satisfy all Refund awards made to Non-Settling Participants in any period shall be referred to herein as a "Refund Excess."

3.4.3 Other than its responsibility with respect to Rerun Shortfalls as provided in Section 3.4.1, Duke shall not be responsible for Receivables Shortfalls or Refund Shortfalls. The California Parties shall, as provided for below and subject to the limitations set forth in Section 3.4.3.4, be responsible for Receivables Shortfalls or Refund

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Shortfalls but in no event shall any member of the California Parties have responsibility for any Refund Shortfall or Receivables Shortfall in excess of the amounts allocated to that Party under this Agreement for the applicable period. The California Parties shall share any Receivables Excess and Refund Excesses. The California Parties shall provide for the allocation of responsibility for any Refund Shortfall or Receivable Shortfall or for the distribution of any Refund Excess or Receivable Excess pursuant to an agreement among them that will be incorporated as part of the Definitive Agreements provided for in Section 5 below or that will be entered into among the California Parties (and potentially also among the Other Claimant Parties) concurrently therewith. The provisions of Section 3.4.3.1 below shall be reflected in such agreement among the California Parties.

3.4.3.1 PG&E, SCE and SDG&E (the "California Utilities") shall be responsible for a share of any Refund Shortfall or Receivables Shortfall allocated to the Pre-October 2, 2000 Period. Any such responsibility shall be deemed to be a reversal of amounts allocated to the California Utilities and shall be paid to the ISO and/or the PX from the amounts allocated to the California Utilities, on a *pro rata* basis determined with reference to the principal amount of Refunds (including Deemed Distributions) allocated to each of the California Utilities under this Agreement for that period. The California Utilities shall be entitled to payment of any Refund Excess or Receivables Excess allocated to the Pre-October 2, 2000 Period. Said amount shall be paid on a *pro rata* basis determined with reference to the total principal amount of the Refund (including Deemed Distributions) allocated to each of the California Utilities under this Agreement for that period.

3.4.3.2 The California Utilities shall be responsible for a share of any Refund Shortfall or Receivables Shortfall allocated to the Pre-January 18, 2001 Period. Any such responsibility shall be deemed to be a reversal of amounts allocated to the California Utilities under this Agreement and shall be paid to the ISO and/or the PX from the amounts allocated to the California Utilities, on a *pro rata* basis determined with reference to the principal amount of Refunds (including Deemed Distributions) allocated to each of the California Utilities under this Agreement for that period. The California

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Utilities shall be entitled to payment of any Refund Excess or Receivables Excess allocated to the Pre-January 18, 2001 Period. Said amount shall be paid on a *pro rata* basis determined with reference to the total principal amount of the Refund (including Deemed Distributions) allocated to each of the California Utilities under this Agreement for that period.

3.4.3.3 CERS shall be responsible for any Refund Shortfall or Receivables Shortfall allocated to the Post-January 17, 2001 Period, and shall be entitled to payment of any Refund Excess or Receivables Excess allocated to the Post-January 17, 2001 Period.

3.4.3.4 Notwithstanding any other provision of this Agreement, the obligation of any of the California Parties to pay money to Non-Settling Participants (i) shall be limited to payment of claims in the FERC Refund Proceedings, and shall not encompass payment of claims in any other proceeding, and (ii) shall not, in any event, exceed the total amount of Refunds and/or offsets allocated to that California Party pursuant to this Agreement for the applicable period. Without limiting the foregoing, nothing in this Agreement shall require the California Parties to bear any liability to any party relating to Duke sales outside of the ISO and PX for the period January 1, 2000 through June 20, 2001 or for any transactions prior to January 1, 2000 or after June 20, 2001.

3.5 *ISO and PX Books and Records.* The PX and ISO shall each be directed in the FERC Order approving this settlement to conform their books and records to reflect the distributions, offsets, transfers and limitations on further adjustments of accounts provided for in this Agreement. The FERC Order approving this Agreement will grant all waivers as are necessary for the ISO and PX to implement this Agreement.

4. SCOPE OF SETTLEMENT AND RELEASES

4.1 Proceedings and Issues Settled.

4.1.1 In return for the consideration specified elsewhere in this Agreement, and subject to obtaining any regulatory approvals required under this Agreement, all claims against Duke for refunds, disgorgement of profits, or other monetary or non-monetary remedies in FERC Docket Nos. EL00-95, *et al.*, and EL03-152, as

they relate to sales by Duke in the ISO and PX and sales by Duke to CERS from January 1, 2000 through June 20, 2001 ("FERC Refund Proceedings") shall be deemed settled, provided that the FERC Refund Proceedings shall not be deemed settled as to Non-Settling Participants.

- 4.1.2 Duke and the California Parties agree that they will not contest the amount of refund liability and/or offsets attributable to Duke in FERC Docket Nos. EL00-95, *et al.* except as may be specifically provided in this Agreement.
- 4.1.3 The California Parties agree that they will not dispute, challenge, seek rehearing, or pursue appeal of the outcome of FERC's investigations in Docket Nos. PA02-2, IN03-10, and EL01-10 and FERC's physical withholding investigation, as they relate to Duke and will withdraw their challenges and not submit any new challenges to the outcome of FERC's investigations in Docket Nos. PA02-2, IN03-10 and EL01-10 and FERC's physical withholding investigation, as they relate to Duke. The California Parties shall withdraw, with prejudice, their petition for review of FERC's order approving the Duke-OMOI settlement in *Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C.*, Order Approving Stipulation and Consent Agreement, 105 FERC ¶ 61,307 (Dec. 19, 2003), reh'g denied, 106 FERC ¶ 61,177 (Feb. 19, 2004).
- 4.1.4 The California Parties agree that they will not dispute, challenge, object to, seek rehearing of, or pursue appeal of the outcome of the FERC proceeding in Docket No. EL03-152, relating to Duke, and further agree that they will withdraw their challenges to and not submit any new challenges to the settlement of the FERC proceeding in Docket No. EL03-152, relating to Duke. The California Parties further agree to withdraw their objections to the settlement (including the resolution of the replacement reserves legal issue) between FERC Trial Staff and Duke in Docket No. EL03-152, as certified and accepted by Judge Cintron, *Duke Energy Trading and Marketing Company*, Certification of Contested Settlement, 107 FERC ¶ 63,016 (Apr. 19, 2004). The consideration provided pursuant to that settlement will be distributed as provided for in Section 3.3.5.

- 4.1.5 Duke agrees to forgo any claim for refunds resulting from any mitigation of CERS' sales of imbalance electricity into the ISO real time market, as well as surcharges associated with such sales, that may be required pursuant to FERC's May 12, 2004 Order on Requests for Rehearing and Clarification in Docket Nos. EL00-95-087 and EL00-98-074 or subsequent order. If, notwithstanding such waiver, Duke is allocated any CERS refunds or surcharges, it hereby assigns those refunds and surcharges to CERS.
- 4.1.6 Duke shall withdraw all outstanding challenges to the orders in the FERC Refund Proceedings with respect to Duke; *provided* that Duke may continue to challenge any matter involving prospective mitigation for periods after June 20, 2001 and the California Parties may continue to assert their respective positions on the issue of prospective mitigation for periods after June 20, 2001, and may continue to assert any position on refunds as related to suppliers other than Duke.
- 4.1.7 Duke releases all claims that it has asserted or could have asserted in the *Inverse Condemnation Cases*, California Judicial Council Coordination Proceeding No. 4203; *provided*, however, that such release shall release only those claims that Duke can assert in such litigation on its own behalf, and shall not release or prejudice the rights of any other party to such proceeding (including the rights of the PX or other PX market participants).
- 4.1.8 Subject to Section 2.1.1.5, as to Non-Settling Participants, Duke shall not be deemed to have waived its right or ability to assert any and all claims and defenses it may have against Non-Settling Participants and Duke shall not be deemed to have waived its right or ability to make any claims, defenses, arguments or take any positions in any proceedings, including the FERC Refund Proceedings, and to resist claims by or pursue claims against such Non-Settling Participants. Nothing in this Agreement shall preclude or in any way limit Duke's defense, under its settlement agreement referenced in section 2.1.4, against any claims by any parties that Duke owes obligations to the ISO, the PX or to any market participant, outside the FERC Refund Proceedings and this Agreement, with respect to the California and western wholesale electricity markets during the period January 1, 2000 through June 20, 2001. The Definitive Agreement shall contain provisions confirming that Duke's obligations to make any payment to any

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entity under the FERC Refund Proceedings are hereby settled in their entirety as provided in this Agreement.

- 4.1.9 The FERC Order approving the settlement shall authorize the payment of any Refunds to the Settling Parties in their capacity as Scheduling Coordinators of record in the ISO and/or as PX Participants in the PX.
- 4.2 *Release of ISO and PX Disputes.* Duke hereby waives and releases any disputes regarding existing ISO and PX settlements for the period January 1, 2000 through June 20, 2001. As assignee of the Duke Receivables for the period January 1, 2000 through June 20, 2001, the Cal Parties may pursue, at their expense, any disputes regarding any future ISO or PX settlement or invoicing adjustments affecting the consideration that they receive under this settlement.
 - 4.2.1 Duke agrees to withdraw with prejudice the CT485 Claim. For purposes of the calculation of the Rerun Shortfall, if, as part of the preparatory rerun, the ISO were to reverse its rescission of payments for energy and ancillary services or its imposition of penalties, as described in Duke's CT485 Claim, such reversals would not count as "actual Duke receivables" within the first sentence of Section 3.4.1. To the extent there are no ISO reversals of rescission of payments for energy and ancillary services or of imposition of penalties, the preparatory rerun, and the calculation of the Rerun Shortfall, shall be unaffected by Duke's withdrawal of its CT485 Claim.
- 4.3 FERC and Federal Power Act Releases.
 - 4.3.1 Subject to Section 4.5 below, the California Parties, on the one hand, and Duke, on the other hand, shall, as of the Settlement Effective Date, be deemed to have released the other from all existing and future claims at FERC and/or under the Federal Power Act that:
 - 4.3.1.1 Duke or any California Party directly or indirectly charged or collected unjust, unreasonable or otherwise unlawful rates, prices, terms or conditions for electric energy, ancillary services, or transmission congestion in the western electricity markets, or in western natural gas markets, during the period January 1, 2000 through June 20, 2001;

4.3.1.2 Duke or any California Party manipulated the electricity or natural gas markets in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of electricity market manipulation discussed in the Final FERC Staff Report, or any other forms of electricity market manipulation), or otherwise violated any applicable tariff, regulation, law, rule or order relating directly or indirectly to the western electricity or natural gas markets during the period January 1, 2000 through June 20, 2001; or,

4.3.1.3 Any California Parties are liable for payments to Duke for congestion charges or for sales of energy or ancillary services during the period January 1, 2000 through June 20, 2001.

4.3.2 The releases set forth in this Section 4.3 do not affect any of the Parties' rights and obligations in the proceedings pertaining to Duke's market-based rate authority insofar as they may relate to transactions undertaken, or requests for relief concerning a period, outside the period January 1, 2000 through June 20, 2001.

4.4 Civil Claims Releases.

4.4.1 Subject to Section 4.5 below, the California Parties, on the one hand, and Duke, on the other hand, shall, as of the Settlement Effective Date, be deemed to have forever released the other from all past, existing and future claims for civil damages and/or equitable relief concerning, pertaining to, or arising from allegations that Duke or any California Party:

4.4.1.1 Charged or collected, directly or indirectly, unjust, unreasonable or otherwise unlawful rates, prices, terms or conditions for energy, ancillary services, or transmission congestion in the western electricity markets or the western natural gas markets during the period January 1, 2000 through June 20, 2001;

4.4.1.2 During the period January 1, 2000 through June 20, 2001, directly or indirectly manipulated the electricity market in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of market manipulation discussed in the Final FERC Staff Report, or any other forms of market manipulation);

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- 4.4.1.3 Was unjustly enriched by any conduct giving rise to the foregoing released claims or otherwise violated any applicable tariff, regulation, law, rule or order relating to transactions in the western electricity or natural gas markets during the period January 1, 2000 through June 20, 2001; or
- 4.4.1.4 Any California Parties are liable for payments to Duke for congestion charges or for sales of energy or ancillary services during the period January 1, 2000 through June 20, 2001.
- 4.4.2 The scope of the releases provided for in Sections 4.3 and 4.4.1 are intended to include releases, subject to the limitations set forth in this Agreement, of the following with respect to the period January 1, 2000 through June 20, 2001:
 - 4.4.2.1 All claims against Duke for refunds or other price adjustments arising from sales of electricity and natural gas by Duke into the western electricity or natural gas markets;
 - 4.4.2.2 To the extent not encompassed above, all claims against Duke for damages and other relief based on federal and state antitrust statutes, Section 17200 of the California Business and Professions Code and any similar statutes of any other state, common law torts, and any and all similar civil statutes and causes of action at law or in equity for damages or restitution as such claims or damages would concern Duke's sales of electricity or natural gas in the western markets;
 - 4.4.2.3 Claims against Duke for any transactions not currently being litigated at FERC but included in rehearing applications pending at FERC, or included in petitions for review, filed by one or more of the Settling Parties; and
 - 4.4.2.4 Claims against Duke seeking refunds, damages, restitution and/or penalties associated with Duke's alleged manipulation of gas published price indices directly (e.g., through misreporting to price index publishers) or indirectly (e.g., through alleged wash trades).
- 4.4.3 The California Parties may continue to cooperate with all state and federal investigations and to participate in all matters before FERC;

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provided that, as of the Settlement Effective Date, the California Parties shall withdraw from and/or not prosecute any litigation, administrative proceedings and investigations with respect to Duke insofar as such prosecution would be inconsistent with the foregoing released claims.

- 4.4.4 The releases contained in this Section 4 shall include any claims against Duke at FERC that are premised on the factual and legal contentions forming the basis for the appeal currently pending before the United States Court of Appeals for the Ninth Circuit in *Lockyer v. FERC*, Case No. 02-73093.

4.5 Limitations on Releases.

- 4.5.1 The releases set forth in Sections 4.1, 4.2, 4.3, and 4.4 do not include any release by the California Parties, or any of them, related to: claims and disputes arising out of any Reliability Must Run ("RMR") contract or the terms of the ISO Tariff relating to the dispatch or payment of RMR generation. Such claims and disputes are not the subject of this settlement but instead are the subject of separate bilateral settlement discussions between Duke and PG&E, and Duke and SDG&E, the resolution of which shall not be a condition precedent or subsequent to the effectiveness of this settlement.
- 4.5.2 The releases set forth in Sections 4.3 and 4.4 do not constitute a waiver or release by the California, Oregon or Washington Attorneys General of (1) the right to proceed under their respective criminal laws against any of the Duke Parties for any actions of or omissions by Duke both before or subsequent to the Settlement Effective Date, or (2) for any actions or omissions which were willfully fraudulent, provided, however, that this limitation on the scope of the releases set forth in Section 4.3 and 4.4 does not apply to any claim that is based solely upon acts or omissions of Duke that occurred prior to the Settlement Effective Date and either (i) is currently known by the California, Oregon or Washington Attorneys General's offices, or (ii) has previously been remediated by this settlement or otherwise.
- 4.5.3 All Parties to this Agreement shall remain free to participate in any existing proceeding, or to initiate or participate in any future proceeding, addressing matters not settled in this Agreement, such as

generic issues concerning market structure, scheduling rules, generally applicable market rules, and generally applicable price mitigation.

- 4.5.4 Nothing herein addresses or resolves the dispute between Duke and SCE concerning the bilateral contract between them that was terminated by Duke in or about February 2001, and which is currently subject to arbitration, except that, within five (5) business days of the Settlement Effective Date, Duke shall withdraw with prejudice all cross-claims in the arbitration proceeding that are based on claims released in this settlement.
- 4.6 *Tolling.* Pending the approvals specified in Section 7 below, the Parties agree to continue the currently in place tolling of any statutes of limitations or similar defenses based on the passage of time with respect to the matters released in this Section 4. If this Agreement is terminated pursuant to Section 2.5, or approval is not obtained as provided in Section 7.1.1, or if this Agreement is otherwise invalidated, the Parties agree notwithstanding any other provision in this Agreement that the tolling provided for in this provision will remain in effect
- 4.7 *No Assistance to Remaining Litigants.* Any Party that has released Duke regarding a claim or claims herein shall not subsidize or assist the litigation, discovery, investigation or analysis of any other party pertaining to the same claims against Duke. This does not, however, preclude any Party from continuing litigation on the same or similar grounds, or related investigatory activities, against suppliers other than Duke. Duke shall not provide assistance to any other litigants in their efforts relating to litigation against the California Parties concerning the matters that are the subject of the above releases. Nothing in this provision shall preclude parties from providing information to others as required by law.
- 4.8 *Effectiveness of Releases.* It is the intention of the Parties that the releases granted pursuant to this Section 4 shall be effective as a bar to all causes of action and demands for monetary relief, including costs, expenses, attorneys' fees, damages, losses and liabilities of every kind, known or unknown, suspected or unsuspected, herein above specified in this Section 4. In furtherance of this intention, Duke on the one hand and the California Parties, the Other Claimant Parties, and OMOI on the other hand, with respect to the specific matters released herein, each knowingly, voluntarily, intentionally and expressly waive, as against each other, any and all rights and benefits conferred by California Civil Code Section 1542 and any law

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of any state or territory of the United States or principle of common law that is similar to Section 1542. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

In connection with such waiver and relinquishment, the Parties each acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they now know or believe to be true and with respect to the subject matter of this Agreement, but that it is their intention hereby to fully, finally and forever settle and release all matters, disputes, differences, known or unknown, suspected or unsuspected, that are set forth in this Section 4. This Agreement is intended to include in its effect, without limitation, other than the limitations set forth in Section 4.5, all claims encompassed within the settlement and releases set forth in this Section 4, including those which the Parties may not know or suspect to exist at the time of execution of this Agreement, and this Agreement contemplates the extinguishment of all such claims. The Releases set forth in this Section 4 shall be, and remain in effect as, full and complete releases, notwithstanding the discovery or existence of any such additional or different facts relating to the subject matter of this Agreement. Notwithstanding the waiver of California Civil Code Section 1542, the Parties acknowledge that the releases provided for in this Agreement are specific to the matters set forth in this Section 4 and are not intended to create general releases as to all claims, or potential claims, between the California Parties, the Other Claimant Parties or OMOI, or any of them, and Duke.

- 4.9 Within fifteen (15) business days of the Settlement Effective Date, DETM, having had its Refund obligations satisfied pursuant to the terms of this Agreement, shall be entitled to release of any collateral it has supplied to the PX.
- 4.10 The California Parties and the Other Claimant Parties shall have until 30 days after execution of this Agreement within which to conduct any additional due diligence they desire with regard to western natural gas market claims being released in Section 4 of this Agreement. In the event

that the California Parties or Other Claimant Parties conclude that Duke engaged in gas market manipulation in the western natural gas markets, they shall have the right to terminate this Agreement unless the Parties mutually agree to modifications of the Agreement acceptable to the Parties.

5. *SUBSEQUENT DEFINITIVE AGREEMENTS*

- 5.1 The terms of this settlement will be memorialized in one or more subsequent definitive agreements ("Definitive Agreements"), which the Parties, by accepting the terms of this Agreement, commit to cooperate in drafting, and which shall further document, in such additional detail as is reasonably necessary to effectuate the intent of the Parties, the settlement terms that are reflected in this Agreement.
- 5.2 The Definitive Agreements shall include an agreement (which may be a separate document) of the California Parties setting forth an allocation among them of the consideration described in Section 3.2, as well as a proposed allocation applicable to other market participants (the "Allocation Matrix"). Additionally, although this settlement covers transactions in the California PX and ISO markets for the period January 1, 2000 through June 20, 2001, it is contemplated that the Allocation Matrix will only provide for refunds with respect to transactions occurring during the period May 1, 2000 through June 20, 2001.
- 5.3 The Definitive Agreements shall include recitals describing the history of certain events and proceedings relating to and arising from the operation of the western electricity markets during the period January 1, 2000 through June 20, 2001.
- 5.4 The Definitive Agreements and this Agreement shall be subject to California law (without regard to the law of conflicts).
- 5.5 The Definitive Agreements shall be completed by the Parties no later than thirty (30) days from the date of the Parties' acceptance of the terms set forth in this Agreement and executed as soon thereafter as is reasonably possible. Once executed, the Definitive Agreements will supersede the terms of this Agreement in their entirety and this Agreement shall thereupon become null and void.

6. *OTHER ENTITIES, SETTLING OR NON-SETTLING*

- 6.1 The Parties agree that they will propose a settlement to FERC that will present the opportunity to resolve the matters identified herein for other market participants as well as for the Parties themselves. Under this

approach, other market participants will have the opportunity to “opt into” the settlement under the terms set forth in the Definitive Agreements within five (5) business days after the Settlement Effective Date. Such terms will include a provision whereby other market participants who “opt into” the settlement will be required to provide to Duke, and shall receive from Duke, the releases set forth in Section 4 *et seq.* above, subject to the limitations set forth in Section 4.5.

- 6.2 If any Non-Settling Participant asserts claims for refunds in the FERC Refund Proceedings, or seeks any other form of monetary relief at FERC in the FERC Refund Proceedings for any claims arising out of or relating to Duke transactions in the ISO and PX for the period January 1, 2000 through June 20, 2000, any additional funds needed to resolve such claims that are not provided for above will be paid as set forth in Section 3.4.
- 6.3 The California Parties agree that they will not challenge or oppose Duke’s defense of its fuel cost recovery claim as against Non-Settling Participants, will not seek discovery or other relief against Duke’s claims against Non-Settling Participants and will not assist any other party’s claim or defense against Duke with respect to Duke’s fuel cost recovery claims. Further, the California Parties agree to support and jointly file with Duke, after execution of this Agreement, a request that the FERC waive application of its May 12 Order with respect to Duke’s obligation to file an audited fuel cost allowance until after this settlement is acted on, and to not require Duke to submit an audited fuel cost allowance claim if this settlement is approved. All other parties that opt into this settlement shall be required, as a condition of settlement, to agree to this provision. If and to the extent that FERC does not grant such motion, Duke shall continue to defend its fuel cost recovery claims as to Non-Settling Participants, notwithstanding any other provision of this Agreement. If such motion is denied, Duke shall, at its own expense, submit its fuel cost data and claim to the auditor. The California Parties shall bear, at their own expense, the costs of the audit and any further third-party costs Duke incurs in defense of its fuel cost claim. The California Parties may, at their sole discretion, determine the level of expenses that they would bear under this provision, in which case Duke will not be obligated to incur additional expenses beyond that level in defense of its fuel cost claim. As provided in this Agreement, Duke assigns to the California Parties any recoveries of its fuel cost claims from Non-Settling Participants. Nothing in this Section 6.3, however, shall restrict the ability of the California Parties to continue to participate in any existing proceeding, or to initiate or participate in any future proceeding, insofar as

such proceeding concerns a gas adder or emissions adder claim made by a supplier other than Duke.

7. REQUIRED APPROVALS; SETTLEMENT EFFECTIVE DATE

7.1 Approvals.

7.1.1 This settlement shall be subject to approval, without material change or condition, unacceptable to any Party, by FERC ("*FERC Order*"). Such approval by FERC shall include a grant of authority and directions to the ISO and PX to implement the terms of this settlement and, if necessary, waiver of any tariff provisions that may provide for contrary resolution of the matters covered by this settlement. The Parties will not oppose such FERC Order stating that the ISO and PX shall be held harmless for implementing the settlement. The FERC Order shall also incorporate by specific reference the section of the Definitive Agreements that recites this section of this Agreement, and shall constitute, other than as to the CPUC and parties that retain claims in the FERC Refund Proceedings, FERC's adoption of the following findings:

7.1.1.1 The resolution of the claims concerning Duke's transactions for electricity and ancillary services in the PX and ISO markets during the Refund Period effected through this settlement will result in rates charged by and prices paid to Duke for electricity and ancillary services provided by Duke that are just and reasonable within the meaning of the Federal Power Act. The California Parties that consent to this finding do so solely for purposes of settlement, and such finding will not impact or otherwise apply to any challenges any of them assert at FERC or in any other forum concerning any person or entity other than Duke;

7.1.1.2 The implementation of this settlement constitutes a final resolution of the claims released herein asserted against Duke before FERC;

7.1.1.3 The settlement provided for by the Definitive Agreement is a fair and reasonable resolution of the claims asserted in the course of the various FERC proceedings and which are released in Section 4 above.

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- 7.1.2 Except as specifically provided in this settlement, FERC shall continue to exercise jurisdiction over the rates, prices, terms and conditions of the Duke transactions that are the subject of the releases in Section 4 and of the implementation of this settlement.
- 7.1.3 Any required applications or other appropriate submissions requesting the approvals referenced in Section 7.1.1 and Section 7.1.4 below shall be submitted to the specified agency within thirty (30) days of the completion and execution of the Definitive Agreements. The application or other submission to FERC shall be prepared jointly by the Parties.
- 7.1.4 This settlement is also subject to approval by the CPUC, as to SCE. It is presently contemplated that the CPUC's approval of the settlement, if granted, will be established through the CPUC's participation as a Party to and execution of the Definitive Agreements. Should it be determined, however, that the CPUC's approval must be obtained through a proceeding before the CPUC, then SCE shall be responsible for preparing and submitting such application or other submission to the CPUC as is determined to be necessary.
- 7.1.5 Within five (5) business days after the Effective Date, Duke shall withdraw any claims against PG&E in the PG&E bankruptcy proceeding relating to matters settled in this Agreement.
- 7.1.6 *Settlement Effective Date.* After execution, the Definitive Agreements and the terms of this settlement shall be effective upon the "Settlement Effective Date", which is defined as the later of: (i) the date FERC issues an order approving the settlement in its entirety; or (ii) the date the CPUC approves the settlement in its entirety, either by entering into the settlement as a Party or, if required, by issuing an order approving the settlement in its entirety that has become final and is no longer subject to appeal. However the tolling (Section 4.6) and confidentiality (Section 9) provisions of this Agreement are effective immediately on execution of this Agreement.

8. NO JOINT AND SEVERAL LIABILITY

Nothing herein shall create any joint or several liability among the California Parties. Further, Duke Energy Corporation, shall not be liable for the payment of any monetary consideration, as provided in Sections 2.1 and 2.2, and such

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consideration shall instead be the joint and several responsibility of the other Duke Parties.

9. CONFIDENTIALITY

The Parties agree that this Agreement will remain confidential and subject to the Rule 602 settlement privilege, and will not be shared with any entity not a Party to this Agreement without the prior consent of all Parties to this Agreement. The Parties agree, however, that they remain free to discuss the terms of this Agreement with non-Parties in a general manner.

DUKE - CALIFORNIA PARTIES SETTLEMENT JULY 12, 2004

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the dates set forth under their respective signatures. This Agreement may be executed in one or more counterparts and shall be deemed accepted by the Parties as of the date it has been executed by the last of the Parties to sign. Signatures transmitted by facsimile shall be deemed the same as originals.

Pacific Gas and Electric Company Name: _____ Title: _____ Dated: _____	Southern California Edison Company Name: _____ Title: _____ Dated: _____
San Diego Gas & Electric Company Name: <u>James Avery</u> Title: <u>Sr. V.P. Electric Transmission</u> Dated: <u>7-12-04</u>	The People of the State of California, ex rel. Bill Lockyer, Attorney General Name: _____ Title: _____ Dated: _____
The California Department of Water Resources acting through its Electric Power Fund, separate and apart from its powers and responsibilities with respect to the State Water Resources Development System Name: _____ Title: _____ Dated: _____	The California Electricity Oversight Board Name: _____ Title: _____ Dated: _____
The Office Of The Governor of the State of California Name: _____	The San Diego District Attorney's Office Name: _____

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CHRISTINE O. GREGOIRE Attorney General of the State of Washington in her capacity as chief law enforcement officer of the State, and to the greatest extent permitted by law by _____ Name: <u>Brady R. Johnson</u> Title: <u>Assistant Attorney General</u> Dated: <u>July 12, 2004</u>	Attorney General of the State of Oregon in his capacity as chief law enforcement officer of the State, and to the greatest extent permitted by law Name: _____ Title: _____ Dated: _____
Federal Energy Regulatory Commission Office of Market Oversight and Investigations Name: _____ Title: _____ Dated: _____	

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Pacific Gas and Electric Company	Southern California Edison Company
Name: _____ Title: _____ Dated: _____	Name: _____ Title: _____ Dated: _____
San Diego Gas & Electric Company	The People of the State of California, ex rel. Bill Lockyer, Attorney General
Name: _____ Title: _____ Dated: _____	Name: _____ Title: _____ Dated: _____
The California Department of Water Resources acting through its Electric Power Fund, separate and apart from its powers and responsibilities with respect to the State Water Resources Development System	The California Electricity Oversight Board
Name: <i>Peter S. GARRIS</i> Title: <i>Deputy Director</i> Dated: <i>7/12/04</i>	Name: _____ Title: _____ Dated: _____
	The San Diego District Attorney's Office
	Name: _____ Title: _____ Dated: _____

DUKE - CALIFORNIA PARTIES SETTLEMENT JULY 12, 2004

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Duke Energy Corporation Name: Martha B. Wyrsh Title: Group Vice President, General Counsel and Secretary Date: July 12, 2004	Duke Energy Americas, LLC Name: Robert B. Evans Title: President Date: July 12, 2004
Duke Energy Merchants, LLC Name: C. Gregory Harper Title: President Date: July 12, 2004	Duke Energy North America, LLC Name: Robert B. Evans Title: President Date: July 12, 2004
Duke Energy Trading and Marketing, LLC Name: Larry A. Wan Title: President Date: July 12, 2004	Duke Energy Morro Bay LLC Name: Robert B. Evans Title: President Date: July 12, 2004
Duke Energy Moss Landing LLC Name: Robert B. Evans Title: President Date: July 12, 2004	Duke Energy Oakland LLC Name: Robert B. Evans Title: President Date: July 12, 2004
Duke Energy South Bay LLC Name: Robert B. Evans Title: President Date: July 12, 2004	Duke Capital LLC Name: David L. Hauser Title: President Date: July 12, 2004

DUKE - CALIFORNIA PARTIES SETTLEMENT JULY 12, 2004

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Attorney General of the State of Washington in his capacity as chief law enforcement officer of the State, and to the greatest extent permitted by law	Attorney General of the State of Oregon in his capacity as chief law enforcement officer of the State, and to the greatest extent permitted by law
Name: _____ Title: _____ Dated: _____	Name: _____ Title: _____ Dated: _____
Federal Energy Regulatory Commission Office of Market Oversight and Investigations Name: William Hederman Title: Director Dated: July 12, 2004	

DUKE – CALIFORNIA PARTIES SETTLEMENT JULY 12, 2004

Attachment 1
Duke Refund Settlement Matrix

Category of Refunds/Claims	(\$ millions)						(\$ millions)					
	PG&E	SCE	SDG&E	CERS	Other	Market Amount	PG&E up to Jan 17	SCE up to Jan 17	SDG&E up to Jan 17	CERS post Jan 17	Other	California Parties Total
Duke												
Post-October refunds - up to January 17, 2001 (FERC gas based MMCF) ⁽¹⁾⁽³⁾	55.3%	25.4%	11.7%	0.0%	4.6%	148.2	86.4	37.7	17.3	0.0	6.8	141.4
Post-October refunds - post January 17, 2001	0.0%	0.0%	0.0%	98.7%	3.3%	12.0	0.0	0.0	0.0	11.6	0.4	11.6
ISO DISPUTE - up to January 17, 2001 ⁽³⁾	55.3%	25.4%	11.7%	0.0%	4.6%	-1.5	-1.1	-0.5	-0.2	0.0	-0.1	-1.8
ISO DISPUTE - post January 17, 2001	0.0%	0.0%	0.0%	98.7%	3.3%	-0.1	0.0	0.0	0.0	-0.1	0.0	-0.1
Emissions offset - up to January 17, 2001 ⁽⁴⁾	40.7%	33.7%	7.0%	0.0%	18.6%	-0.1	-0.1	0.0	0.0	0.0	0.0	-0.1
Emissions offset - post January 17, 2001 ⁽⁴⁾	0.0%	0.0%	0.0%	89.7%	10.3%	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Gas allowance (subtractor) - up to January 17, 2001 ⁽⁴⁾	40.7%	33.7%	7.0%	0.0%	18.6%	-32.1	-13.2	-11.0	-2.3	0.0	-6.1	-25.7
Gas allowance (subtractor) - post January 17, 2001 ⁽⁴⁾	0.0%	0.0%	0.0%	89.7%	10.3%	-3.2	0.0	0.0	0.0	-2.9	-0.3	-2.9
Refund period total						122.1	71.9	26.1	14.8	8.6	0.7	121.4
Pre-October relief (uses gross load approach) :	37.8%	34.6%	6.6%	0.0%	20.6%	36.1	14.4	13.2	2.5	0.0	7.9	30.2
Cash position before other claims						160.2	86.3	39.3	17.3	8.6	8.6	151.6
CERS Short-Term Bilateral Transactions						0.0	0.0	0.0	0.0	8.00	0.00	8.0
California Litigation Escrow ⁽⁵⁾⁽⁴⁾						32.3	5.1	5.1	0.9	8.76	12.45	39.9
Total Additional Consideration for Global Settlement						200.5	91.5	44.4	16.2	25.4	21.1	179.4

(1) Post-October refund amounts up to January 17 include PX Forward amounts up to January 31.

(2) Gas allowance and emissions offset allocations based on gross load.

(3) SCE and SDG&E shares in the refund period will require the adjustment for SDG&E's 20% ownership of SONGS

(2.35% increase in SCE's share and 2.35% decrease in SDG&E's share) through the California Refund Escrow instructions.

(4) CERS amounts under the "California Litigation Escrow" for Post Jan 17 include amounts for the California Attorney General, the CPUC and the CEQB.

(5) Others amounts under the "California Litigation Escrow" include amounts for the States of Oregon and Washington, SD AG, and Cities/Water Districts

Attachment 2

If the CAISO has issued a 24-Hour Forecast or Alert Notice pursuant to its Operating Protocol E-508 (Sep. 8, 2003), then Duke Energy must bid all of its available operating capacity from its gas-fired California generation into the CAISO real-time imbalance energy market for the hours specified in the Forecast or Notice. The obligation of each Duke Energy generating unit under this section shall expire on the earlier of one-year from the date the CAISO implements its Integrated Forward Market ("IFM"), January 1, 2008, the retirement of the unit, the termination of the unit's Participating Generator Agreement, or the transfer of ownership and operational control of the unit to an unaffiliated entity. If Duke Energy fails to submit a supplemental energy bid for any portion of its Available Operating Generation for any interval, the unbid quantity will be deemed by the ISO to be bid at the greater of the Generating Unit's Proxy Price or Reference Price and inserted into the bid stack. In the event of a conflict between the requirements of this section and the CAISO Tariff or operating instructions, the latter shall control. Duke Energy shall be relieved of its obligations under this section during any period in which a Utility Distributing Company or Metered Subsystem, or their scheduling coordinators, fail to satisfy the creditworthiness requirements of the CAISO Tariff or have defaulted on payments due under the CAISO Tariff.

"Available Operating Capacity" is defined as an on-line and synchronized generating unit's unloaded and otherwise uncommitted capacity at the time a supplemental energy bid is submitted, based upon the unit's: (a) maximum operating level; (b) adjusted for any outages or reductions in capacity; (c) adjusted for any limitations on operation under applicable law; (d) adjusted for limitations under RMR agreements; (e) minus capacity committed to be scheduled under a bilateral agreement; (f) minus capacity subject to real-time control by unaffiliated third-parties; (g) minus capacity committed to provide Ancillary Services to the CAISO either through the CAISO's Ancillary Services market or through self provision by a Scheduling Coordinator, (h) minus capacity committed to self-provide station power; and (i) minus the capacity committed to deliver Energy or provide Operating Reserve to Native Load.